

REMARKS

Reconsideration and allowance of the above referenced application are respectfully requested.

Claim 1 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claim 1 is cancelled herewith, but its limitations are incorporated into claim 8. This claim has been obviated in the course of the amendment.

Claims 1-64 stand rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Kahn. In response to this rejection, claim 8 has been amended into independent form. Claims 22, 34 and 35 have been amended into independent form. Claim 38 is amended to include the limitations of claims 41, 42 and 43 therein. Claim 46 has been amended to include language making it generic to claims 51 and 52, and claim 54 has been amended to include the limitations of claim 58. The rejection of claims 58 and 62 are respectfully traversed.

The reasons for the allowability of the newly amended claims is provided herein.

Kahn teaches a system for online bargaining. As part of that bargaining, there is an off-line communication mode, described in paragraphs 96-114. In addition, Kahn discloses that one of the bargaining techniques can be an auction style technique.

The word "auction" is used in Kahn in three different places, in paragraphs 126, 150 and 153. The reason why the word "auction" is used so sparingly, is that an auction is really inconsistent with the disclosure and teachings of Kahn. In Kahn, the word "auction" is used for an operation that is without active participation by the Business Controller, and hence is completely outside any of the teachings related to the Business Controller. Paragraph 150 describes how an auction can be carried out

based on the buyer that submits the highest bid. Nowhere, however, is there any disclosure of notifying that bidder of an outbid. Nowhere is there any disclosure of accepting a new bid on that item if the bidder is outbid. Paragraph 153 simply states that the product can be sold by auction bargaining or fixed price. This establishes the three techniques of selling, where auction is a wholly different technique than bargaining. In other words, the embodiments in Kahn that are directed to bargaining are very distinct from the auctioning embodiments.

However, with that brief introduction, we turn to the scope of the claims as they have been amended. Claim 8 requires that the information translating part sends e-mail messages that include information about items in the auction on which a user has been outbid. Claims 15 and 16 recite placing a new bid after the outbid has been detected.

The rejection alleges that information about whether the user has been outbid is sent. This is based apparently on this disclosure in Kahn's paragraphs 140 and 141. This interpretation is respectfully suggested to be incorrect. Initially, paragraphs 140 and 141 relate to online bargaining, not to off-line communication which is the subject matter of the Kahn embodiments previously relied on. In addition, note above that bargaining is described by Kahn to represent a different embodiment than auctioning.

Even ignoring these two major differences, either of which by itself shows that paragraphs 140 and 141 are not part of the embodiment being relied on, it should still be seen that these sections do not in any way meet the limitations of the claims.

Paragraph 140 describes the Business Controller presenting prices that have been offered by other buyers, and paragraph 141 describes checking at step BN 4.6 whether the buyer's bargain Price has been revised. Note that this is not an outbid, and this is

not the buyer placing a new bid responsive to an outbid notification. Rather, this is a new offer, as evident from the paragraph 141, which states that the buyer may accept the offer at step BN4.10. Again, this is not a bidding system, is not an indication that someone else has bid a higher amount, but is rather part of the negotiation.

Claim 8 requires that e-mail messages are sent that include information about items over the Internet on which a user has been outbid. Kahn does not disclose in paragraphs 140 and 141 that e-mails are sent about this. Kahn only sends such emails in the “offline communications” embodiment, beginning at paragraph 96. In fact, paragraphs 140 and 141 are under the general section (set forth in paragraph 131 as a section heading) of online bargaining with the buyer, not off-line bargaining.

Moreover, there is no disclosure of an outbid notification. 140 and 141 simply teach that is part of the negotiation, you can make an offer based on what others have paid. Outbidding is entirely different than paying what others have paid. In fact, outbidding, means, by its very nature, paying MORE than others have paid.

Moreover, there is no disclosure of the other dependent claims such as claims 15 and 16 which require placing a new bid. Kahn does not disclose placing a new bid, it discloses an offer based on what others have paid. An offer is not the same as a bid. An offer can be accepted and then one automatically receives the item. A bid in an auction becomes the new highest price, one which is possible to the outbid on again.

Claim 22 has been similarly amended into independent form, and should be allowable for analogous reasons to those discussed above.

Claim 34 has also been amended into independent form, and defines requesting a bank balance. Based on an electronic search of Kahn, there is not one word about requesting a bank balance. The web page server does maintain banking information,

but that banking information is simply used for payment once the negotiation is complete. There is no disclosure that there is any way to maintain to request a bank balance. In fact, section 98 of Kahn explains the different things that could be done with this system, a number of different products, legal services, medical services, and the like. Any product or service that constitutes "subject matter adapted to be priced and sold for a bargained for consideration" is intended to be encompassed within Kahn. A bank balance of claim 34, and a stock portfolio of claim 35 is nowhere disclosed, and has nothing to do with "sold... for a bargained for consideration".

Claim 38 has been amended into independent form, and should be allowable for reasons discussed above.

Claim 46 has been amended to recite that the information is about "balances in a user's personal account". There is no disclosure of this in Kahn, and hence this claim should be similarly allowable.

Claim 54 has been amended to include the limitations of claim 58 therein. This claim should be patentable for reasons discussed above.

Claims 59 and 62 each define outbid notifications and replying to an e-mail to place a new bid. As discussed above, nothing in Kahn teaches any of this. Kahn does not teach the higher bargain price embodiment being used as part of the off-line communication. A higher bargain price, in any case, is not an outbid notification. Moreover, a higher bargain priced offer is an offer that can be accepted, not a new bid.

For all of these reasons, all of these claims should be allowable.

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because

the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Therefore, and in view of the above amendments and remarks, all of the claim should be in condition for allowance. A formal notice to that effect is respectfully solicited.

Please charge any fees due in connection with this response to Deposit Account No. 50-1387.

Respectfully submitted,

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